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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

TRANG MY THI NGUYEN,

Plaintiff and Appellant,

v.

THIEN VINH NGUYEN,

Defendant and Respondent.

G040316

(Super. Ct. No. 06CC09353)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Randell L. Wilkinson, Judge. Affirmed as modified.

Lenore Albert for Plaintiff and Appellant.

Rogers, MacLeith & Stolp and Douglas R. MacLeith for Defendant and Respondent.

This case concerns a dispute between siblings over the ownership of a house located on Penny Lane in Garden Grove (the Penny Lane property). The house was purchased in 2000. Legal title was originally held by one of the siblings—Trang My Thi Nguyen (Trang) and she resided there. In 2001, Trang conveyed title to one of her brothers—Thien Vinh Nguyen (Thien), but she continued to reside in the house for several more years. In 2006, Trang sued Thien seeking to quiet title to the Penny Lane property for herself. Trang claimed she paid for the property and merely placed legal title in Thien’s name, to be held in trust for her, prior to her divorce to thwart any community property interest her soon-to-be ex-husband might assert. Thien claimed he paid for the property, let Trang live there out of pity, and originally placed legal title in Trang’s name to thwart claims by potential future judgment creditors. He later demanded Trang reconvey legal title when he learned Trang’s husband might assert an interest in the property.

Following a bench trial, the trial court found Trang had failed to present clear and convincing evidence sufficient to overcome the presumption of Evidence Code section 662¹ that as legal title holder Thien was beneficial owner of the property. On appeal, Trang contends: (1) the trial court’s statement of decision is defective; (2) the trial court erred by admitting documents from her dissolution action; (3) the judgment is not supported by substantial evidence; and (4) the court erred by failing to strike certain costs. We find merit only in her claim the court awarded interpreter fees in excess of those requested by Thien, and modify the costs award accordingly. In all other respects, we affirm the judgment.

FACTS

Thien, his younger sister My Phuong Thi Nguyen (Phuong), and another brother are owners of a family business, PN Jewelry, which makes gold chains. At the

¹ All further statutory references are to the Evidence Code, unless otherwise indicated.

relevant times, PN Jewelry processed between \$400,000 and \$500,000 worth of gold into chains each month. The Vietnamese name for PN Jewelry was Phouc Nguyen.

Trang is Phoung and Thien's older sister. Trang married Long Nguyen (Long) in 1986. The marriage had been arranged by Trang's mother. The Penny Lane property was bought in May 2000, ostensibly by Trang. The purchase price was \$262,500. The down payment was \$133,526 (plus a \$1,000 deposit) and a loan was obtained for \$130,000. The mortgage was fully paid off in less than a year. Trang and Long lived in the house. Prior to Trang and Long's divorce in 2001, title was conveyed to Thien, but Trang remained living in the house with her son and various tenants. Trang and Long reconciled in 2006 and she moved in with him in San Diego. About six months later, Trang filed this lawsuit.

We begin by describing a few of the documents introduced into evidence pertaining to the initial purchase of the Penny Lane property in 2000, conveyance of title to Thien in 2001, and payment of various bills.

Exhibit No. 10 is an application for a \$130,000 loan from Countrywide Finance for purchase of the Penny Lane property. Trang was listed as the sole borrower to hold title as her separate property. The application stated the purchase price was \$262,500, plus about \$5,000 in escrow closing costs. It indicated the source of the down payment (approximately \$137,500) was Trang's checking and savings accounts. The application stated Trang was employed by PN Jewelry and by Longview Realty (owned by her husband, Long), and had a monthly income of \$3,000, plus rental income from another property of \$850. Trang claimed she had liquid assets of \$177,000, including bank accounts, stock, and mutual funds; real estate holdings worth \$300,000; and other assets including jewelry and furniture of \$50,000. The loan application said nothing about Trang owning any gold.

The original grant deed recorded May 5, 2000, showed title to the Penny Lane property was conveyed to Trang "a married woman as her sole and separate

property.” The \$130,000 deed of trust and the escrow closing statement were also in Trang’s name as buyer.

Trang introduced a copy of a check dated March 12, 2000, from her and Long’s personal bank account for the \$1,000 deposit on the Penny Lane property. She also introduced a receipt for a \$100,000 cashier’s check bought on May 3, 2000, from Wells Fargo Bank, and a receipt for a \$33,526 cashier’s check bought at Washington Mutual Bank by Long on May 2, 2000. Trang also produced a copy of a check dated April 12, 2000, payable to her, for \$47,927.89—the proceeds from the sale of a property located on Marty Lane in Santa Ana.

Trang introduced property tax bills and insurance bills for the Penny Lane property that were in her name, and applications in her name to the homeowner’s association and city for various landscaping improvements. She produced several canceled checks spanning the years 2000 through 2005, from either Trang and Long’s joint bank account or Trang’s bank account, for insurance, monthly association fees, utilities, water and sewer, and trash. Trang had one canceled check from her and Long’s checking account dated November 13, 2000, for payment of 2000-2001 property taxes.

Trang introduced several exhibits pertaining to payment of the mortgage on the Penny Lane property including: a receipt (with no obvious date) for a cashiers check from Bank of America for \$20,000, a canceled check dated June 8, 2000, from Longview Realty payable to Countrywide for \$9,000, five canceled checks payable to Countrywide from Trang and Long’s bank account—one dated July 7, 2000, for \$953.89, two dated August 4, 2000, for \$953.89 and \$44,000, and two dated August 5, 2000 for \$953.89 and \$15,000. Trang also introduced copies of checks payable to Trang and Long from stock and mutual fund redemptions including two checks dated July 25, 2000, totaling \$19,224, and nine checks dated August 9 and 10, 2000, totaling \$50,000.

Trang introduced a full reconveyance of the deed of trust, recorded January 11, 2001, and a grant deed recorded July 7, 2001, executed by Trang conveying the

Penny Lane property from Trang to Thien. Handwritten on the grant deed is the statement “inter-family transfer no consideration.”

Thien’s trial exhibits included documents filed by Trang in her divorce. Exhibit No. 108 was Trang’s schedule of assets and debts filed on July 19, 2002, and signed by her under penalty of perjury. It directed Trang to list all her known community and separate assets even if they were in the possession of another person. Trang specifically stated she had only furnishings worth \$1,500 and a car worth \$12,000, and she had no interest in any real estate. Exhibit No. 109 was Trang’s separate property declaration signed by her under penalty of perjury and filed on July 19, 2002, again stating she had no interest in real estate. There was also a canceled check from Thien’s bank account dated 2003 for payment of property taxes.

Trial Testimony

Thien

Thien testified he, Phoung, and their brother (Nhan Nguyen), owned PN Jewelry. In 2000, he lived in his parents’ house with his new wife, Phoung, and his parents, but he wanted to buy a house as an investment. Phoung (who handled all Thien’s personal and business finances) located the Penny Lane property as a potential investment. To get the best possible price (\$262,500) he had to make a 50 percent down payment. Although he had funds to pay for the entire property, he wanted to hang onto some of his money for a while in case he found another good investment.

Thien’s older sister, Trang, was poor and was always asking Thien for money. Thien wanted to let Trang live in the Penny Lane property for two reasons: first, he wanted to her to live in a better neighborhood and house than she was currently in, and second to please his mother. The siblings’ mother felt very badly because she had arranged Trang’s marriage to Long, which had turned out to be a poor choice for her daughter. Thien put the house in Trang’s name because he wanted to minimize the risk of losing assets in the future should he or his business ever be involved in litigation.

Trang understood she must convey the house back to Thien when he directed her to do so.

Thien testified he had a large amount of gold, much of which had been a wedding present to him from his parents. He gave \$100,000 worth of gold (which was kept in the safe at PN Jewelry) to Phoung, directing her to sell it and obtain a cashier's check. He later gave Trang \$32,500 in cash for the balance of the down payment. Thien testified that over the course of the year, he gave Trang cash to pay off the balance on the mortgage and to pay the taxes and insurance. He had Trang pay the association fees and utilities herself—so she would be in some way responsible for her housing.

In 2001, Trang told Thien that Long was demanding his name be placed on title to the Penny Lane property. So Thien directed Trang to reconvey title to him, and she did. At no time since title was placed in his name in 2001, until this lawsuit was filed in 2006, did Trang ask Thien to place title back in her name. After 2001, tax bills and insurance bills came to Phoung's house, and Thien continued to give either Phoung or Trang cash to make tax payments and insurance payments.

Phoung

Phoung confirmed much of Thien's testimony. She testified Trang was frequently without financial resources. In 1994, Trang borrowed \$70,000 to pay off the mortgage on her house in Santa Ana, and that money had never been paid back. Whenever Phoung asked for the money, Trang would start crying and say she had no money to repay her sister. Phoung was now suing Trang to recover the money.

Between 1995 and 2000, Trang was at PN Jewelry daily. She was always complaining to Phoung that she had no money, and was constantly borrowing money from Phoung. Trang borrowed \$5,000 to buy a car, which she never paid back. Trang never told Phoung she was trading gold or that she had any investment properties.

Phoung testified that she located the Penny Lane property and suggested to Thien he buy it as an investment. Thien expressed his wish that Trang be allowed to live

in the house. Phoung confirmed the siblings' mother felt very badly that she had placed Trang in the marriage with Long, she was poor, and lived in a very bad neighborhood. Phoung did not know why Thien had title placed in Trang's name.

After deciding to buy the property, Thien directed Phoung to contact Hung Son Jewelry about selling it some gold. Thien took a large amount of gold (\$100,000 worth), from the PN Jewelry safe and gave it to Phoung. Phoung and Trang took the gold to Hung Son Jewelry and obtained a cashier's check for \$100,000. Before escrow closed, Phoung saw Thien give Trang a large amount of cash from the PN Jewelry safe for the remainder of the down payment. Over the next year, Phoung saw Thien give Trang several more large amounts of cash—\$130,000 in total—to pay off the remaining balance on the mortgage. Thien or Phoung frequently gave Trang cash to pay for taxes, insurance, and landscaping.

After the house was paid off in 2001, Trang mentioned to Phoung that Long was demanding his name be put on title. Phoung reminded Trang the property was Thien's. Trang did not dispute this.

Trang

Trang testified PN Jewelry was ostensibly owned by Trang's siblings, but it really belonged to their parents. Trang worked as a manicurist, but also worked at PN Jewelry earning about \$2,000 a month.

Trang testified her mother arranged her marriage to Long. But years later, upset that Trang spent too much time with Long and their child, Trang's mother directed Trang to divorce Long so she could devote more time to the family business. Trang did as she was told. She asked Thien to take title to the Penny Lane property to hold in trust for her until after the divorce became final. She transferred title to Thien to prevent Long from asserting any interest in the property.

Since 2003, Trang no longer worked at PN Jewelry and had become estranged from her mother. Trang believed her family was claiming Thien owned the

Penny Lane property because PN Jewelry had been robbed while Trang was working, and the family felt she owed them for the lost merchandise.

Trang testified she had bought the Penny Lane property using \$100,000 in gold she had bought and saved over the years. She kept her gold in various bank safe deposit boxes, but had no receipts for any gold she had purchased, or for bank safe deposit boxes. Trang testified Phoung went with her when she sold the gold to Hung Son Jewelry for the down payment. Trang returned to the jeweler three weeks later and obtained a receipt for the sale of the gold. She produced a handwritten receipt dated June 1, 2000, from Hung Son Jewelry bearing Trang's name, with "Phuoc Nguyen" (the Vietnamese name for PN Jewelry) written above her name. Testimony indicates the receipt is for sale of \$100,000 worth of gold to Hung Son Jewelry. Trang testified she paid the remaining down payment with proceeds from other property she had sold.

Trang acknowledged the loan application said nothing about having \$100,000 in gold as an asset, and she stated her income was \$3,000 a month, when it was only \$2,000. Trang testified she paid all property taxes, association fees, maintenance, repairs, and insurance herself. She denied Thien ever gave her any money towards the purchase price of the house or for taxes, insurance, or maintenance. Trang testified she had spent \$40,000 to landscape the property, but paid in cash and had no receipts.

Trang and Long's divorce became final in 2002. Trang said she asked Thien to reconvey title to the property at the time, but he said he was too busy. It was not until 2006 that Trang realized Thien was not going to give the property back to her.

Trang admitted that in 1994 she had borrowed \$70,000 from her sister, Phoung, but could not remember why. She had offered to pay the money back in 2000, but Phoung told her that she did not need the money back at the time. Trang agreed she had signed papers in her divorce denying she had any interest in any real property. She also had signed an application for a restraining order in which she stated the Penny Lane property had been a gift to her and Thien from their parents. Although at her deposition

she testified she understood what was in the papers she had signed, at trial she testified it had all been made up by her divorce attorney.

Long

Long, Trang's ex-husband, testified they divorced in 2001, but reconciled in 2006, about six months before Trang filed this lawsuit. During their marriage, he and Trang had owned several pieces of real estate and he often placed title solely in his name or Trang's name. He had been the buyer's broker in the purchase of the Penny Lane property.

Long testified the down payment for the Penny Lane Property came from \$100,000 in gold belonging to Long and Trang, that was kept in a safe deposit box, and with community funds from their joint bank account. On rebuttal, Long testified part of the down payment came either from an advance on his and Trang's line of credit, or from the sale of mutual funds. He denied they ever received any money from Thien, and testified he and Trang made all payments from their joint bank account, and from stock and mutual fund sales.

Long testified Trang had filed for divorce, and he was angry when he discovered she had transferred title to the Penny Lane property to Thien. But he decided not to pursue any interest in the property because he had agreed it was his wife's separate property. After Long moved out of the Penny Lane property, Trang rented rooms to various tenants. The rental agreements, prepared by Long, were with Trang, and rent was paid to Trang.

Vinh Nguyen

Vinh Thanh Nguyen testified he rented two rooms in the Penny Lane house from Trang. He paid rent to Trang, not to Thien.

Statement of Decision

In its statement of decision, the trial court granted Trang's request to amend her complaint to allege causes of action for quiet title, constructive trust, resulting trust,

declaratory relief, and adverse possession. The court noted the conflict in the testimony. Trang contended she bought the home with her own assets (including gold and mutual funds), and she only transferred the property to Thien to protect it from claims by Long. Trang presented checks and money orders used as payment of the purchase price, loan payments, insurance, taxes, improvements, and utilities. Long testified in support of Trang—but they were now reconciled and living together.

Thien testified he actually paid for the house and the gold was his. Thien testified he let Trang live in the home because she was living in a very bad neighborhood and to please his mother. Phuong who was present when the gold was sold and other large amounts of cash given to Trang, confirmed Thien's testimony. Although Thien had little documentary evidence, he presented the declarations signed by Trang under penalty of perjury denying having any interest in real property. There was also evidence Trang lacked the financial resources to purchase the house. Phuong loaned Trang \$70,000—Trang said she could not remember why—and Trang was never able to repay Phuong. Trang was constantly asking family members for money, and complained Long did not give her any money to buy food or clothes.

The court found Trang was completely lacking in credibility. Although the documentary evidence she submitted might have supported her claim, her credibility was completely undermined by her own perjury and the testimony of Thien and Phuong. The court concluded Trang's evidence did not amount to clear and convincing evidence to rebut the presumption contained in section 662. Thien held title by virtue of a grant deed, and Trang's evidence she was the actual purchaser was not sufficiently credible to overcome the presumption Thien was the full owner.

DISCUSSION

Trang's opening brief contains a jumble of arguments and legal concepts, which boil down to four basic contentions: (1) the statement of decision is defective; (2) the trial court erred by admitting her declarations signed under penalty of perjury in

her dissolution action; (3) the judgment is not supported by substantial evidence; and (4) the court erred by failing to strike certain costs.

1. The Statement of Decision/Standard of Review

Peppered throughout Trang's opening brief are various complaints about the trial court's statement of decision. She argues it contains legal errors including that the court relied on inadmissible evidence of her statements contained in declarations from her dissolution action, and the trial court erroneously concluded she failed to prove her case. She also complains the statement of decision is defective because it lacks necessary findings to support the judgment.

"A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.

[Citations.]" (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133 (*Arceneaux*).)

Specifically, "[u]nder the doctrine of implied findings, the reviewing court must infer, following a bench trial, that the trial court impliedly made every factual finding necessary to support its decision." (*Fladeboe v. American Isuzu Motors, Inc.* (2007)

150 Cal.App.4th 42, 48 (*Fladeboe*).)

To avoid such implied findings, a party must follow the two-step process provided by Code of Civil Procedure sections 632 and 634. (*Arceneaux, supra*, 51 Cal.3d at pp. 1133-1134.) "[F]irst, a party must request a statement of decision as to specific issues to obtain an explanation of the trial court's tentative decision [citation]; second, if the court issues such a statement, a party claiming deficiencies therein must bring such defects to the trial court's attention to avoid implied findings on appeal favorable to the judgment [citation]." (*Id.* at p. 1134.) If a party fails to bring omissions or ambiguities in the statement of decision to the trial court's attention, "that party waives the right to claim on appeal that the statement was deficient in these regards," and the reviewing court will infer the trial court made implied factual findings to support the

judgment, even on issues not addressed in the statement of decision. (*Ibid.*; see *Fladeboe, supra*, 150 Cal.App.4th at pp. 48, 59-60.)

We review both express and implied findings of fact in a statement of decision for substantial evidence. (*SFPP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 462 (*SFPP*).) In applying the substantial evidence standard, we “view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor. . . .” (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660; *Escamilla v. Department of Corrections & Rehabilitation* (2006) 141 Cal.App.4th 498, 514-515.) We independently review questions of law. (*SFPP, supra*, 121 Cal.App.4th at p. 461.) “[A] party does not waive objections to legal errors appearing on the face of a statement of decision by failing to respond to it.” (*Fladeboe, supra*, 150 Cal.App.4th at p. 59.)

The record does not support Trang’s claim she objected to any alleged defects in the court’s statement of decision. After trial, the trial court issued a two-page written ruling. Trang filed a request for statement of decision identifying 39 separate issues of law and fact on which she sought findings. She later filed a document titled “Objections to [Thien’s] Proposed Statement of Decision”—although no such document (i.e., Thien’s proposed statement of decision), is contained in the appellant’s appendix and the register of actions contained in the appellant’s appendix does not indicate any such document was ever filed. The trial court later issued its statement of decision that was virtually identical to its original ruling. No objections to the trial court’s statement of decision were filed by Trang. Her objections to whatever had been filed by Thien cannot be construed as objections to the court’s statement. Because Trang did not object to the statement of decision, on appeal we may only consider legal errors that appear on the face of the statement, and whether the court’s findings of fact (express and implied) are supported by substantial evidence. (*Fladeboe, supra*, 150 Cal.App.4th at p. 59.)

2. Admissibility of Declarations from Dissolution

Trang contends the court erred by admitting, and considering, trial exhibits Nos. 108 and 109—her declarations from her dissolution action signed under penalty of perjury in which she specifically denied any ownership interest in any real property. She asserts the court’s consideration of this evidence is a legal error appearing on the face of the statement of decision requiring reversal. We reject her contention.

Trang apparently filed a written motion in limine to exclude evidence of the papers she filed in her dissolution action, but the motion is not part of the appellant’s appendix. At the commencement of trial, the trial court stated the motion was denied because it was not timely served under Orange County Rule of Court No. 450 [requires all motions in limine be exchanged at case management conference to be held at least 10 days before trial], and even had the motion been timely served, the evidence was highly probative on Trang’s credibility. In argument, Trang’s counsel mentioned only section 352 as a reason for excluding the evidence—arguments that were rejected by the trial court. When Thien sought to move one of the declarations into evidence, exhibit No. 109, Trang’s counsel specifically stated she had no objection.

On appeal, Trang argues the evidence was inadmissible for several reasons: it was not relevant; it was inadmissible character evidence under sections 787 and 1101, subdivision (a); and it was inadmissible under section 352 because its probative value was outweighed by its prejudicial effect. Because only the later objection appears from the record, we consider only Trang’s section 352 argument. (See, § 353 [judgment may not be set aside due to erroneous admission of evidence unless specific ground of objection stated].)

Section 352 permits the trial court to exclude evidence if its prejudicial effect substantially outweighs its probative value. “In general, the trial court is vested with wide discretion in determining relevance and in weighing the prejudicial effect of proffered evidence against its probative value. Its rulings will not be overturned on

appeal in the absence of an abuse of that discretion. [Citations.]” (*People v. Cooper* (1991) 53 Cal.3d 771, 816.)

Trang has not shown the trial court abused its discretion by admitting and considering the declarations from her dissolution action. The evidence was highly probative for two reasons. It went to her credibility as a witness (she either perjured herself in her dissolution action when she denied owning any interest in real property or perjured herself in this action when she testified she was the full beneficial owner of the property). Furthermore, if Thien was being truthful in her declarations, then they actually supported Thien’s and Phoung’s testimony the property was in fact purchased by Thien and Trang had no interest in it (i.e., she truthfully stated in her declarations she had no interest in real property and Long did not pursue his community interest in the property because it was not Trang’s).

Section 352 did not require exclusion of the evidence. Although on its face section 352 applies only to jury trials, its principles have been held applicable to court trials in cases involving admissibility of cumulative evidence or evidence involving an undue consumption of time. (*Houghtaling v. Superior Court* (1993) 17 Cal.App.4th 1128, 1138, fn. 9.) But to the extent “[t]he code section concerns probative value being substantially outweighed by danger from ‘undue prejudice’ or ‘confusing the issues’ or ‘misleading the jury’ [citation]” that danger is nonexistent in a court trial. (*In re Jose M.* (1994) 21 Cal.App.4th 1470, 1481.) Trang simply has not shown the court prejudged her or that the court abused its discretion by admitting the evidence.

Trang’s reliance on *Williams v. Kidd* (1915) 170 Cal. 631, and *Shaver v. Canfield* (1937) 21 Cal.App.2d 734, is misplaced. She cites both cases to support her assertion evidence of statements made by a grantor prior to delivery of a deed, or subsequent thereto, are inadmissible as a matter of law to prove the grantor’s intent to convey title at the time the deed was executed. But in both those cases, the grantor’s statements were introduced to prove title was *other than* as stated on the deeds—i.e., that

the grantor had *not* intended to convey title to the grantee named in the deed. The *Shaver* court specifically noted that where there was doubt, “the law will examine the surrounding circumstances . . . and if two conflicting inferences arise, one as to the delivery and the others as to non-delivery, declarations by a decedent both before and after delivery are admissible for the purpose of throwing light upon these conflicting inferences.” (*Shaver v. Canfield, supra*, 21 Cal.App.2d at p. 740.)

3. Sufficiency of Evidence

Trang contends the judgment for Thien must be reversed because she submitted substantial evidence supporting a judgment in her favor on her causes of action for resulting trust, constructive trust, unjust enrichment, and adverse possession. That of course is not the standard of review. Trang did not object to the court’s statement of decision and we are concerned only with whether its findings—express or implied—are supported by substantial evidence. (*County of Solano v. Vallejo Redevelopment Agency* (1999) 75 Cal.App.4th 1262, 1277.)

We agree with Thien that Trang has waived appellate review of her substantial evidence claims. “[A]n attack on the evidence without a fair statement of the evidence is entitled to no consideration when it is apparent that a substantial amount of evidence was received on behalf of the respondent. [Citation.] Thus, appellants who challenge the decision of the trial court based upon the absence of substantial evidence to support it “are required to set forth in their brief all the material evidence on the point and *not merely their own evidence*. Unless this is done the error is deemed waived.” [Citations.]’ [Citation.]” (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.) Trang’s opening brief (there is no reply brief) is completely devoid of any discussion of the evidence supporting the judgment. She sets forth none of Thien’s and Phoung’s testimony—and simply asserts her documents demonstrated “[they] were being less than truthful in their testimony”

Furthermore, substantial evidence supports the trial court's findings and the judgment. Section 662 provides, "The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof." Because legal title was in his name, via a grant deed, Thien was presumed to be the beneficial owner of the Penny Lane property.

Trang first contends her evidence gave rise to a presumption of a resulting trust² thereby overcoming the section 662 presumption, and the presumption of a resulting trust prevails. But requisite to imposing a resulting trust would be a finding that Trang provided the consideration for purchase of the property. She contends there is undisputed clear and convincing evidence she was the sole source of the consideration. But in taking this position, she completely ignores Thien's and Phoung's testimony the gold which was the source of most of the down payment was Thien's, and Thien gave Trang cash for the remainder of the down payment and for further payments on the property. Their testimony constitutes substantial evidence to support the trial court's finding Trang did not provide the consideration for purchase. The evidence supporting the court's finding Trang was not the actual purchaser of the Penny Lane property, and that Thien was the source of payment, similarly supports its ruling against her on her constructive trust and unjust enrichment causes of action.³

² "When a transfer of real property is made to one person, and the consideration therefor is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made. 'The trust that is "presumed to result" from this situation is termed a "resulting trust"; its purpose is to enforce the intentions of the parties. It is distinguished from a constructive trust, which is typically imposed to rectify fraudulent behavior.' [Citation.]" (*In re Marriage of Ruelas* (2007) 154 Cal.App.4th 339, 342.)

³ A constructive trust is an equitable remedy, not a substantive claim for relief. "A constructive trust is an involuntary equitable trust created by operation of law as a remedy to compel the transfer of property from the person wrongfully holding it to the rightful owner. [Citations.] The essence of the theory of constructive trust is to prevent unjust enrichment and to prevent a person from taking advantage of his or her

Trang also asserted a cause of action for adverse possession. ““In an action to quiet title based on adverse possession the burden is upon the claimant to prove every necessary element: (1) Possession must be by actual possession under such circumstances as to constitute reasonable notice to the owner. (2) It must be hostile to the owner’s title. (3) The holder must claim the property as his own under either color of title or claim of right. (4) Possession must be continuous and uninterrupted for five years. (5) The holder must pay all the taxes levied and assessed upon the property during the period. [Citations.]’ [Citation.]” (*Preciado v. Wilde* (2006) 139 Cal.App.4th 321, 325.)

The trial court found adverse possession had not been proven because there was evidence Trang occupied the property with Thien’s permission, and there was evidence both Thien and Trang paid property taxes. Those findings are supported by substantial evidence. Thien and Phoung testified Thien permitted Trang to live in the house because he felt badly for her housing situation and to appease his mother who felt guilty about having made a poor marriage choice for Trang. There was evidence taxes were paid sometimes by Trang with money given to her by Thien for that purpose. There was also testimony that Phoung sometimes paid the taxes on Thien’s behalf, and that at least once Thien paid the property taxes directly.

4. Costs

As prevailing party, Thien was entitled to costs. (Code Civ. Proc., §§ 1032, 1033.5.) Thien submitted a cost bill seeking a total of \$18,139.72 in costs. Tran filed a motion to strike certain costs, which the court granted in part awarding Thien only \$9,879.93. Trang objects to most of the costs that were awarded. Unfortunately, Thien has not responded to Trang’s arguments concerning the award of costs.

own wrongdoing. [Citations.]’ [Citation.]” (*PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th 384, 389.)

Trang first complains the court improperly allowed under costs for service of process \$112.50 incurred by Thien to serve himself. The argument is frivolous. Trang did not object to this cost in her motion to strike. Furthermore, the claimed \$112.50 cost was for service of process on “Vinh Nguyen.” As pointed out by Thien in opposition to Trang’s objection to deposition costs for Vinh Nguyen, Vinh Nguyen was Trang’s witness (a tenant at the Penny Lane property)—Trang’s attorney obviously had the names confused.

Trang next objects to \$37 in witness fees claimed by Thien because the memorandum of costs does not identify the witness. This argument is also frivolous. Trang did not object to this cost item and, in any event, it was apparently disallowed by the court.

Trang objects to \$875 awarded, which she asserts was for duplicate “transcripts from the court reporter.” In its minute order, the court allowed \$875 for witness fees, but we assume this was an error because only \$37 was claimed for witness fees—the \$875 item on Thien’s cost bill was for court reporter fees established by statute. Trang’s argument implicitly concedes the \$875 award was for court reporter fees, not witness fees. Trang’s objection is, again, utterly frivolous. She incorrectly states the cost item sought by Thien was for preparing duplicate trial transcripts. It was not. Thien submitted documents establishing the \$875 cost was for court reporter per diem fees, which he was statutorily entitled to recover. (Code Civ. Proc., §§ 1032, subd. (b), 1033.5, subd. (a)(11); *Heppler v. J.M. Peters Co.* (1999) 73 Cal.App.4th 1265, 1298.) Indeed, Thien had separately claimed \$924 for the transcript under the cost bill heading for reporter’s transcripts, which was objected to by Trang and disallowed by the court.

Finally, Thien’s cost bill claimed a total of \$8,473.59 under “other” costs (item No. 13), itemized as follows: \$2,700 for a Vietnamese interpreter for trial; \$5,430 for trial technology for exhibits at trial; and \$343.59 for attorney service/courier fees. The court’s minute order stated it allowed “Interpreter fees: \$4,200.” Trang objects to

the award arguing none of the costs sought under item No. 13 were allowable, the court awarded more interpreter fees than Thien sought, and \$2,700 claimed for the interpreter fees was unreasonable. Because the court only awarded interpreter fees, we address only them.

Trang has not demonstrated the court lacked authority to award interpreter fees. The cost is not expressly allowed or disallowed under Code of Civil Procedure section 1033.5, subdivisions (a) and (b), and thus is within the court's discretion under subdivision (c)(4), which provides, "Items not mentioned in this section and items assessed upon application may be allowed or denied in the court's discretion." Trang presented absolutely no evidence below or on appeal supporting her assertion the \$2,700 claimed was unreasonable. However, because the court awarded more than Thien requested in interpreter fees, the cost award must be reduced by \$1,500.

DISPOSITION

The order awarding costs is modified by reducing the award of interpreter fees to \$2,700, resulting in a cost award of \$8,379.93. In all other respects, the judgment is affirmed. Respondent is awarded his costs on appeal.

O'LEARY, J.

WE CONCUR:

SILLS, P. J.

MOORE, J.